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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/664,442	09/19/2003	Kazutoshi Kaizuka	45144-00042	4509

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Squire, Sanders & Dempsey L.L.P
14th Floor
801 S. Figueroa Street
Los Angeles, CA 90017-5554

EXAMINER

ELHILO, EISA B

ART UNIT	PAPER NUMBER
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1751

DATE MAILED: 03/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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DETAILED ACTION

1 This action is responsive to the amendment filed on January 9, 2006.

2 Objection of claims 2, 4 and 7 is withdrawn because of the applicant's amendment.

3 The rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Dias (US 6,54,791 B1) in view of Roller (US 4,857,306), is maintained for the reasons set forth in the previous office action mailed on September 8, 2005.

Response to Applicant's Arguments

4 Applicant's arguments filed 1, 9, 2006 have been fully considered but they are not persuasive.

With respect to the rejection of claims 1-7 under 35 U.S.C. 103(a) as being unpatentable over Dias (US' 791 B1) in view of Roller (US' 306), Applicant argues that there is no suggestion or motivation in either Dias or Roller to add a poly-element material to a water-based hair dye because the problems asserted to be solved by the Dias and Roller references, either singly or combined, are entirely independent from those solved by Applicant's invention.

The examiner respectfully disagrees with the above argument because the use of patents as references is not limited to what the patentees describe as their own inventions or to the problems with which they are concerned. They are part of the literature of the art, relevant for all they contain. "*In re Heck*, 699 F.2d 1331, 1332-33 216 USPQ 1038, 1039 (Fed. Cir. 1983) (quoting *In re Iemelson*, 397 F.2d 1006, 1009, 158 USPQ 275, 277 (CCPA 1968)). Further, a reference may be relied upon for all that it would have reasonably suggested to one having ordinary skill in the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, 10 USPQ2d 1843 (Fed.Cir.), *cert. denied*, 493 U.S. 975 (1989). In

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this case Dias et al. (US' 791 B1) as a primary reference suggests the use of metallic and metal dyes in a dyeing composition (see col. 41, line 28). Roller as a secondary reference clearly teaches a cosmetic composition comprising tourmaline compound (see col. 2, lines 3-7 and line 35) and wherein the composition also comprises dyes or pigments which are intended to place colored accents on the wears' hairstyle (see col. 1, lines 8-10). Therefore, there is a sufficient motivation to one having ordinary skill in the art to be motivated to incorporate the tourmaline compound as taught by Roller in the dyeing composition of Dias et al., to arrive at the claimed invention with the reasonable expectation of success for improving the dyeing properties of the composition.

Further, Applicants have not shown on record the criticality of the dyes in a combination with silicon dioxide based poly-element minerals in the claimed composition over the composition of the closest prior art of record.

1. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

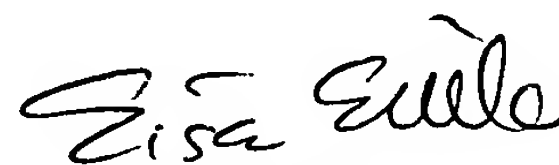
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Eisa B. Elhilo whose telephone number is (571) 272-1315. The examiner can normally be reached on M - F (8:00 -5:30) with alternate Friday off.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Douglas McGinty can be reached on (571) 272-1029. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Eisa Elhilo
Primary Examiner
Art Unit 1751

March 6, 2006